



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

January 8, 1976

Honorable Everett L. Anschutz
Executive Secretary
Employees Retirement System
of Texas
P. O. Box 12337, Capitol Station
Austin, Texas 78711

Opinion No. H-759

Re: Whether credit for
military service is to be
counted when determining
eligibility for judicial
retirement.

Dear Mr. Anschutz:

You have requested our opinion concerning the construction of House Bill 887. Acts 1975, 64th Leg., ch. 522, p. 1367. The Bill amends article 6228b, section 2A, V.T.C.S., to provide in part:

Any contributing member of the Judicial Retirement System who has completed eight (8) or more years of service creditable under the Judicial Retirement Act . . . may receive creditable service for not more than forty-eight (48) months of federal military active duty service performed during time of armed conflict by paying to the Judicial Retirement System for deposit in the General Revenue Fund an amount equal to 6 percent of his current monthly salary for each month of such military service established.

Article 6228b, section 4, provides in part:

Any person who has served on one (1) or more Courts of this State . . . for twenty-four (24) years or more at any time . . . shall likewise be entitled to retirement pay

Your question is whether service credited under section 2A may be considered as service "on one (1) or more Courts of this State" within the meaning of section 4.

Prior to its amendment, section 2A provided:

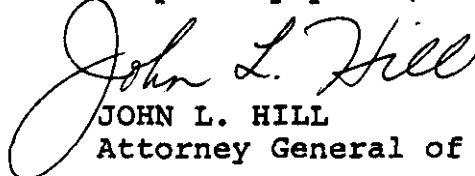
The time served in the armed forces of the United States government during the time of war by any Judge coming within the purview of this Statute shall be credited to the length of judicial service, if such services in the armed forces of the United States government were during the elective tenure of such Judge.

We believe it to be clear that creditable service obtained under the former section 2A would have been "credited to the length of judicial service" under section 4. Other statutes pertaining to credit in retirement systems for military service similarly define "creditable service." V.T.C.S. art. 6228a, §§ 4A and 4G; V.T.C.S. art. 6228g, § 2(11). We are aware of no legislative intent to restrict the definition of "creditable service" as used in the present section 2A. In the absence of such an intent, article 6228b should be given a "pro-beneficiary construction." Attorney General Opinion H-348 (1974); See Woods v. Reilly, 218 S.W.2d 437 (Tex.Sup. 1949). Accordingly, it is our opinion that years credited for military service under section 2A are to be considered years of service "on one (1) or more of the Courts of this State" for purposes of section 4.

S U M M A R Y

Military service credited under section 2A of article 6228b should be considered as service on the Courts of Texas for purposes of section 4 of article 6228b.

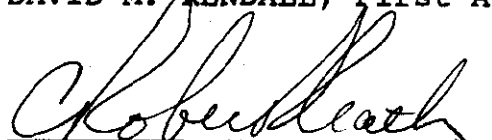
Very truly yours,


JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

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